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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MY THANH LE,

Defendant and Appellant.

H034761

(Santa Clara County  
Super. Ct. No. CC943655)

Defendant My Thanh Le was charged by information with possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)) and misdemeanor public intoxication (Pen. Code, § 647, subd. (f)). He filed a motion to suppress all evidence obtained as a result of a warrantless search conducted on March 13, 2009 (Pen. Code, § 1538.5), contending that the search conducted by police officers violated the Fourth Amendment. The prosecutor filed opposition to the motion, contending that the search was conducted by firefighters responding to an emergency. The testimony at the August 11, 2009 hearing on the motion was as follows.

Around 6:15 p.m. on March 13, 2009, San Jose Fire Engineer Mark Roberts and paramedics responded to a call of “a person down” at a strip mall on Senter Road. Upon arrival, they found defendant down and unresponsive. As the paramedics were doing a medical survey of defendant, Roberts did a pat-down search of defendant for safety

reasons. There were no police officers on the scene, and Roberts wanted to make sure that there were no needles or weapons on defendant. He also wanted to find out why defendant was down. He found a small twisted foil wrapper in defendant's sock and removed it, as he does with all personal property he finds on a person who needs to be transported by ambulance. He thought he gave the unopened wrapper to the ambulance personnel.

When San Jose Police Officer Rodolfo Matus arrived on the scene, a firefighter approached him and said, "We found this" "on this gentleman." The firefighter was referring to defendant, who was strapped on a gurney. The firefighter had a piece of open foil that contained three rocks of crack cocaine.

Defendant filed supplemental points and authorities in support of his motion to suppress, arguing that firefighters and paramedics must abide by the Fourth Amendment. The prosecutor filed a supplemental response, arguing that the firefighter's search was conducted to provide emergency medical assistance and not to investigate the possibility of criminal activity. On August 18, 2009, the court denied the motion to suppress, stating that it was "satisfied that Mr. Le's Fourth Amendment rights were not violated."

On September 1, 2009, defendant entered no contest pleas to both counts in the information in exchange for a court offer over the prosecutor's objection of an eight-month county jail term and the termination of probation upon the completion of that term. Defendant waived a full probation report, and the court referred the matter to the probation office for computation of credits. On September 24, 2009, the court granted defendant probation "to terminate on completion of a county jail sentence of eight months," with 152 days of custody credits. In lieu of a \$1,000 fine imposed pursuant to Health and Safety Code section 11350, subdivision (d), defendant agreed to serve a 10-day consecutive jail term. The court ordered defendant to pay other fines and fees and also ordered defendant to register as a narcotics offender pursuant to Health and Safety Code section 11590.

On the date he was sentenced, defendant file a notice of appeal challenging the denial of his motion to suppress (Cal. Rules of Court, rule 8.304(b)(4)(A)). We appointed counsel to represent him in this court. Appointed counsel has filed an opening brief which states the case and facts but which raises no issues. Counsel's proof of service attached to the brief states, "No Service on Appellant as I was unable to locate him." We attempted to notify defendant of his right to submit written argument in his own behalf within 30 days, by mailing the notification to his last known address, the county jail, on February 8, 2010, but the notification was returned as defendant was no longer in custody.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record and have concluded that there is no arguable issue on appeal.

The judgment (order granting probation) is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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DUFFY, J.